



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 802, Sacramento, CA 95814

Delta Stewardship Council
980 9th Street, Ste. 1500
Sacramento, CA 95814

Re: September Arcadis BDCP report to the Council

Dear Chairman Isenberg and Council Members:

We indicated in our public comments pertaining to the Arcadis report on the Bay Delta Conservation Plan (BDCP) at your September meeting that we would provide more detailed comments. These comments are attached. Though we acknowledge that subsequent to Resources Secretary Snow's comments your Arcadis consultants and staff attempted to provide additional context to provide for a more accurate interpretation of the report's many (often misplaced) criticisms of the BDCP, the fact is the written document, as presented and as now exists in the record, is rife with inappropriate and inaccurate conclusory statements that simply do not reflect the reality of the BDCP process.

Moreover, the emphasis on an assessment of and the resulting comments related to the BDCP steering committee process seems to imply a role for the Council that is much more intrusive than that authorized by the Delta Reform Act (Act). Instead, Arcadis should focus its future activities to highlight issues of concern relevant to the Council's designation as a "responsible agency" for the EIR/EIS process that will be analyzing a proposed project, developed through the BDCP steering committee process, and potential alternatives to it that will also achieve the water supply reliability and ecosystem objectives stated in the purpose and need statement -- consistent with and in furtherance of the coequal goals. We agree with Council member Marcus who said of the Council's role, "it is not our job to micromanage BDCP" and "substitute our judgment" for that of the steering committee.

Overall, the Arcadis report belied a general ignorance of the process to date, including over 3 years of effort and analysis within a transparent and public forum (including web access to meetings and web posting of draft documents and background material). The report also seems to plead a poverty of information on the one hand based on an asserted lack of responsiveness to requests for information, while on the other hand Arcadis still apparently felt confident enough to make various conclusions about the efficacy of what has or has not been accomplished with an accusatory and antagonistic tone that appears to echo the view of some sampling of unidentified "stakeholders".

As to the complaint of a lack of access to information, as Secretary Snow testified, he could find no record of such informational requests and when he queried relevant staff they were unaware of such requests as well. Our member agencies' staff involved with the BDCP, including individuals on the BDCP

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“management team”, were also unaware of such requests being made. Hopefully this issue will be resolved with the Secretary’s commitment to designate a point person for communication with Arcadis. Finally, with respect to Arcadis basing some of its critique on the views of unidentified “stakeholders”, as stakeholders ourselves we do not share the views that were expressed and would have hoped for a more balanced presentation in the document.

We look forward to future reports from Arcadis exhibiting a better understanding of the BDCP process while serving the Council’s “responsible agency” role more effectively, and ultimately contributing to an improved EIR/EIS process and product.

Sincerely,

A handwritten signature in black ink, appearing to read "BMB", with a stylized, flowing script.

BMB

**RESPONSE OF THE STATE AND FEDERAL CONTRACTORS WATER AGENCY
TO ARCADIS REPORT TO THE DELTA STEWARDSHIP COUNCIL
REGARDING THE STATUS OF THE BAY DELTA CONSERVATION PLAN
SEPTEMBER 2010**

The following provides Arcadis statements in bold and our response/reaction following.

The consultants will brief the Council and then engage in a discussion with Council on how best to proceed with resolving/ investigating issues with BDCP.

The Council does not have a role in “resolving” or “investigating” issues related to the BDCP. As a “responsible agency” it is to provide comment on the draft documents, not be engaged in their production per se. In this instance, the formal draft documents will not be released until next spring. All of this review and comment, including public comment, is beyond the norm and should not be attacked as inadequate when in fact to do so falls into the category of “no good deed goes unpunished.” It is appropriate, as noted at the Council’s September meeting, for Arcadis to identify issues of concern that the Council may wish to communicate with the lead agencies – i.e. to “ring the bell” if necessary.

The BDCP final draft is scheduled for release on November 18, 2010.

This is not correct. A “preview” public draft is scheduled for release on 11/18/10. In fact, various drafts and information informing the drafting has been shared with the steering committee and posted to the web throughout the BDCP process over the last three years, plus. A formal “final draft” is targeted for release next spring, concurrent with the formal “public draft” of the EIR/EIS, consistent with the BDCP planning agreement.

In its current form BDCP does not appear to evaluate a wide range of conveyance alternatives, nor does it appear to consider alternatives that will reduce current levels of reliance on the Delta for water export. BDCP stakeholders have suggested that a revised purpose and need statement should be developed.

Though a number of alternatives are being considered, it is unclear that these constitute a “full range.”

The BDCP steering committee received multiple briefings regarding the results of modeling runs and operational scenarios, including estimates of impacts of climate change in out-decades. With regard to infrastructure “alternatives”, both a tunnel and a canal have been analyzed. In addition, there is a “no action” alternative and a non-dual through-Delta alternative. As for the range of diversions that could feed into the new conveyance facility, 3,000 cfs, 6,000 cfs, 12,000 cfs and 15,000 cfs diversions are being analyzed. Logically, a “full range” would seem to be defined as from zero to the capacity of the existing pumping facilities in the south Delta, so the asserted lack of clarity is difficult to fathom.

As so many have and continue to do, the conflation of the “reduce[d] reliance” language in the Delta Reform Act with the BDCP process is erroneous. State policy is to “reduce reliance...in meeting...future water supply needs through a statewide strategy of investing” in alternatives. BDCP’s purpose is to restore lost supplies and reliability to meet current demands. It is not within the scope of BDCP to articulate a “statewide strategy of investing” in alternative means of meeting future water demands,

particularly when the legislation says that is a task for “each region that depends on water from the Delta watershed” to engage in.

While a handful of BDCP “stakeholders” question whether the BDCP purpose and need statement should be changed in response to the Delta Reform Act, there is no need to do so because the existing purpose and need statement is consistent with the Delta Reform Act, and in fact clearly reflects the co-equal goals.

BDCP does not appear to include evaluation of exports alternatives that will reduce exports. Can BDCP achieve its purpose if it includes evaluation of a reduced exports alternative?

BDCP is not designed to reduce exports. Exports can be reduced without the investment of tens of billions of dollars and, in fact, have been significantly reduced over the last decade with little environmental benefit to show for it. The purpose of BDCP is to improve conveyance, as mandated by the Delta Reform Act, and invest in restoration of the Delta ecosystem to get it on to a path toward recovery. Through a multi-species, comprehensive approach, it is expected that exports lost over the last decade will be able to be recovered on a long-term average basis, while improving the Delta ecosystem too. Export contractors understand there is no guarantee of a certain water supply, but do believe that their investment in the BDCP and its implementation will improve certainty, reliability, and on a long-term average basis, increased water deliveries over the reduced levels experienced under the present regulatory regime. BDCP will not “achieve its purpose” under a pre-determined reduced exports alternative, however, such an alternative is in the mix for analytical purposes within the EIR/EIS.

Addressing the SWRCB flow criteria requires BDCP operational scenarios that support both the quantity and pattern of flows needed for covered fish and other aquatic species...

BDCP as yet does not fully apply SWRCB flow criteria...

Per the Act, the SWRCB’s flow criteria are to “inform” the BDCP, not be imposed upon it. The SWRCB itself concluded that the identified flow criteria, if implemented, would result in significant negative impacts to salmon as well as significantly reducing water supplies to all users of water within and exported from the Delta watershed. The BDCP operational criteria and adaptive range will be shaped in consideration of the SWRCB’s flow criteria, but with the appropriate balance between the plan’s goals of ecosystem and water supply improvements. Indeed, by definition, imposition of the flow criteria identified by the SWRCB would not satisfy the coequal goals but rather would make a mockery of them. BDCP is developing operating criteria that will provide a range within which real-time management choices can be made by project operators in consultation with the fishery agencies to optimize benefits to the fisheries while achieving water supply and water supply reliability goals as well, i.e. the coequal goals. Ultimately, it is telling that the SWRCB’s report explicitly and strongly supported the BDCP effort as a key component of a comprehensive approach necessary to contribute to achievement of the coequal goals.

Can improved reliability be achieved with reduced water exports that have a greater certainty of delivery? At this time BDCP does not appear to notably reduce reliance on water exports from the Delta.

The question belies a lack of understanding of the problems being addressed by the BDCP and the way water is managed throughout California. In addition to reliability of supplies, there is also the other side of the equation which is the adequacy of supplies. BDCP is addressing both sides of the coin, reliability and supply. As noted previously, it is not BDCP's role or obligation to address the policy to "reduce reliance" on the Delta to meet "future water supply needs".

It appears that BDCP assumes full contract delivery as a goal and does not provide an analysis of ecosystem benefits that may be gained from reduced exports.

BDCP "assumes" nothing, but does indeed have as part of its purpose and need a goal of recovering the ability to have full contract deliveries, subject to hydrology and environmental requirements, as explicitly stated in the purpose and need statement. Again, the continued reference to "reduced exports" as a stand-alone "goal" is meritless in the context of the BDCP and meeting California's current water supply needs to serve its economy and maintain public health and safety.

BDCP does not appear to consider a full range of both near- and long-term operations scenarios.

This is not the case. The BDCP considered various operational scenarios and will continue to evaluate them going forward. At the end of the day, the operational scenarios will be subject to SWRCB permitting, as well as needing to satisfy NCCP/HCP criteria.

BDCP stakeholders have also expressed concern regarding the currently anticipated release of the draft BDCP document prior to the release of the draft EIR/EIS. It has been noted that the BDCP Planning Agreement requires concurrent release to facilitate adequate public review and comment.

Arcadis again communicates this statement as if the unidentified "BDCP stakeholders" referenced represent a broadly held viewpoint. The fact is that the formal public drafts of the BDCP and the DHCCP EIS/EIR are scheduled for concurrent release this coming spring. A "preview draft" (for lack of a better term) is slated for release November 18, 2010. Instead of providing the basis for an unfounded criticism, this "preview draft" is allowing for extending the public's ability to comment on a draft product for six months prior to what would normally be the case. Additionally, as required by law, there will be time for public comment after the formal draft is actually released next spring. Thus, rather than giving the public short shrift, the BDCP process is providing many more months of opportunity for public comment – after a publically accessible and transparent process lasting more than three years putting the proposed project together which was designed to meet the rigorous public process requirements of the NCCPA.

As described in our first report, it remains unclear if BDCP will meet its schedule, and whether there will be sufficient time to adequately address comments and evaluate alternatives prior to release of final public draft.

While schedule is always difficult, the comment begs the question as to what requirement exists to "address comments" prior to release of a public draft. Moreover, while all of the alternative evaluation

may not be totally complete by November 18, 2010, whatever is required for a satisfactory formal public draft will be completed prior to its release, currently targeted for the spring of 2011. This is another unfounded “concern”.

There does not appear to be compliance with the federal agencies “White Paper on Application of the 5 Point Policy-04-29-10” guidance to BDCP.

The “White Paper” is not a “compliance” document. It was offered by the federal agencies to foster discussion and collaboration on how best to formulate the pertinent portions of the BDCP to most effectively address fishery agency expectations with regard to satisfying NCCP and HCP requirements.

BDCP also does not currently provide funding assurances as required by the HCP process.

What is required for receiving permits is understood. This comment from Arcadis confuses current status with final development of the complete BDCP. Such criticisms, seemingly based on the presumption that such issues aren’t being discussed or won’t be resolved, are misplaced. In fact, some of the requirements for NCCP/HCP certification, e.g. the finance strategy, may not be resolved until the environmental process is completed and the permits applied for. While discussions of such issues are underway, to expect closure on all of them by November 18, 2010 or by release of the formal public draft next spring is unrealistic and unnecessary.

Though BDCP is an open process, limited information is publicly available on DHCCP, under which the preliminary engineering and design is done. It is important that we gain access to technical information that has led to key decisions.

The DHCCP is not a public process. Like most projects, the project proponents here are developing a plan for a project to achieve certain purposes. The public draft EIR/EIS is the access point for those in the public seeking such information on the environmental effects, alternatives, and mitigation measures available for the plan. However, with respect to the Council’s access to information as a “responsible agency” there are legitimate areas of information that are accessible to the Council upon request prior to release of a Draft environmental document.

The efficacy of proposed measures is not well supported and significant future uncertainty persists with regards to the effects of proposed BDCP actions on the distribution, abundance, and ecological influence of invasive species.

Uncertainty is the rule when it comes to environmental management in the Delta. As Council member Nordhoff commented, there will never be “certainty” with respect to environmental understanding in the Delta. The BDCP is an effort to move beyond the ineffective species-by-species approach of the current regulatory structure and implement a comprehensive, multi-species, multi-stressor reduction NCCP/HCP. It is expected that the numerous actions taken together, including habitat creation and the promotion of desired ecosystem functions and processes, will result in a total benefit that is greater than the sum of the parts. It is expected that invasive species will be addressed directly by those agencies that can and have the authority to do so, e.g. DFG should remove bag limits on bass species as urged by NMFS, and indirectly by making the Delta less supportive of invasives by making its hydrodynamics and geometry more “natural” in their variability. Again, this is a criticism without rational justification in the context of the BDCP.